

---

**Federal Communications Commission**

---

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
El Dorado 900, LLC	)	File Numbers: EB-05-LA-224
	)	
	)	NAL/Acct. No. 200632900008
Owner of Antenna Structures	)	FRN 0006792303
1041256 and 1041257	)	
City of Industry, California	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: February 9, 2006**

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that El Dorado 900, LLC ("El Dorado"), owner of antenna structures #1041256 and #1041257 in the City of Industry, California, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended, ("the Act"),<sup>1</sup> and Sections 17.23, 17.47, 17.48 and 17.57 of the Commission's Rules ("Rules")<sup>2</sup> by failing to comply with the antenna lighting, monitoring, notification and registration requirements specified for antenna structure #1041257 and for failing to comply with the Commission's registration requirements for antenna structure #1041256. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>3</sup> that El Dorado 900, LLC is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

**II. BACKGROUND**

2. Antenna structure #1041257 and antenna structure #1041256 comprise the two-tower AM array located at located at 751 Echelon Avenue, City of Industry, California and utilized by station KALI (AM). According to antenna structure #1041257's<sup>4</sup> antenna structure registration, the structure is required to have "Obstruction Marking and Lighting" in accordance with the applicable paragraphs of the Federal Aviation Administration ("FAA") Circular Number 70/7460-1J. Specifically, the structure is required to be painted and have obstruction lighting consisting of at least one flashing red beacon on top and two or more steady-burning sidelights on opposite sides at the midpoint.<sup>5</sup>

---

<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. §§ 17.23, 17.47, 17.48 & 17.57.

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> This antenna structure is designated as tower one (TWR1) of a two-tower transmitting array. The other tower included in this array is ASR #1041256.

<sup>5</sup> See FAA Circular Number 70/7460-1J, Chapters 3, 4, 5, 13.

3. Robert Burdette and Associates, Inc., is the registered owner of antenna structures #1041256 and #1041257. However, El Dorado has acknowledged that the ownership of the towers was transferred to their organization sometime in 1999. In a 2002 investigation, the Los Angeles Office found that El Dorado did not maintain the required lighting on the structure; did not make the required observations of the lighting or of a properly maintained indicator to register failure of the lighting; did not notify the FAA of any observed or otherwise known lighting outage; and did not notify the Commission of a change in ownership of the antenna structure. El Dorado was notified of these findings on June 28, 2002.<sup>6</sup>

4. On June 6, 2005, the Los Angeles Office received a complaint that the top mounted flashing red beacon and intermediate level steady burning side lights were not functioning on antenna structure #1041257. Later that day, a Los Angeles agent conducted an inspection of antenna structure #1041257, and found no lights illuminated on that structure. The agent reported the outage to the FAA's Riverside Flight Service Station ("FSS"). The FSS issued a 15 day Notice to Airmen ("NOTAM") and informed the Los Angeles agent that no prior light outage report had been made for antenna structure #1041257.

5. On June 7, 2005, the agent reviewed the antenna structure registrations for antenna structures #1041256 and #1041257 and found that both structures continued to be registered to Robert Burdette and Associates. Later that day, the agent contacted MultiCultural Broadcasting, Inc. ("MultiCultural"), licensee of KALI(AM), a tenant on antenna structures #1041256 and #1041257, and informed MultiCultural of the light outage.

6. On June 15, 2005, MultiCultural responded to the agent stating that they had contacted an engineer for El Dorado, who stated that he was aware of the outage. MultiCultural also informed the agent that the damage appeared to have been caused by vandalism and that a remote monitoring system had been designed but not yet installed for the structure.

7. On August 18, 2005, a Los Angeles agent reviewed the automated antenna light logs for antenna structure #1041257. The logs reflected a continuous light outage on antenna structure #1041257 beginning on May 24, 2005, continuing through June 8, 2005. According to the logs, the antenna structure lights were brought back to service on June 9, 2005.

8. On December 15, 2005, Los Angeles staff reviewed the Commission's antenna structure registration database and found that antenna structures #1041256 and #1041257 continued to be registered to Robert Burdette and Associates. No updated information had been filed reflecting a change in ownership of the structures.

### III. DISCUSSION

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply

---

<sup>6</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232900004 (Enf. Bur., Western Region, Los Angeles Office, released June 28, 2002). El Dorado paid the forfeiture amount in that case. *See* 47 U.S.C. 504(c). Pursuant to 47 U.S.C. §503(b)(6), we may only propose forfeitures to non-licensees for apparent violations that occurred within one year of the date of this *NAL*. However, Section 503(b) does not bar us from assessing whether El Dorado's conduct prior to that time period apparently violated the Act in determining the appropriate forfeiture amount for violations that occurred within the one-year statute of limitations. *Inphonic, Inc.*, 2005 WL 1750418 (FCC 05-145, released July 25, 2005) at ¶ 24.

with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>7</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

10. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.<sup>9</sup> Part 17 of the Rules is designed to promote air safety, by prescribing regulations for antenna structures that constitute or that potentially constitute "a menace to air navigation."<sup>10</sup> Section 17.23 of the rules requires that registered antenna structures conform to the mandatory FAA painting and lighting recommendations set forth on the FAA Notice issued to the structure owner.<sup>11</sup> Antenna structure # 1041257 is 75.3 meters in height and is assigned FAA lighting specifications requiring that the structure have at least one flashing red beacon mounted at the top of the antenna tower and two or more steady-burning sidelights on opposite sides of the midpoint. Because of the substantial public safety issues involved, Section 17.47 of the Rules further requires antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly.<sup>12</sup> Additionally, Section 17.48(a) requires antenna structure owners to immediately notify the FAA of any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.<sup>13</sup> Section 17.57 further requires antenna structure owners to immediately notify the Commission using FCC Form 854 upon any change in ownership information to facilitate contact if problems arise.<sup>14</sup>

11. On June 6, 2005, in response to a complaint, a Los Angeles agent inspected antenna structure #1041257 and observed that its lights were not functioning. The antenna tower was completely dark. The agent notified the FAA and a NOTAM was issued. According to the antenna structure's automated logs, the lights were out for a total of 16 days. Although an engineer for El Dorado appeared to be aware of the outage, no report was filed with the FAA FSS. The El Dorado engineer acknowledged that no automatic monitoring system was in place, and there is no evidence that daily observations were made of the structure. If such observations were made, there is no evidence El Dorado filed NOTAM reports with the FAA FSS to ensure the safety of the public. Finally, El Dorado continues to acknowledge ownership of antenna structures #1041256 and #1041257, but also continues to fail to update the ownership information with the Commission, forcing the Los Angeles agents to contact tenants on the structures to

---

<sup>7</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>8</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>9</sup> 47 U.S.C. § 303(q).

<sup>10</sup> 47 C.F.R. § 17.1(a).

<sup>11</sup> 47 C.F.R. § 17.23.

<sup>12</sup> 47 C.F.R. § 17.47.

<sup>13</sup> 47 C.F.R. § 17.48.

<sup>14</sup> 47 C.F.R. § 17.57.

investigate light outages.

12. Prior to the light outage that was investigated by the Los Angeles agent on June 6, 2005, El Dorado was aware of the Commission's lighting, monitoring, notification and registration requirements. Therefore, El Dorado's violations were willful. The violations occurred for more than one day, therefore, they were repeated. Based on the evidence before us, we find that El Dorado 900, LLC, apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.23, 17.47, 17.48 and 17.57 of the Rules by failing to comply with the antenna lighting, monitoring, notification and registration requirements specified for antenna structure #1041257, and for failing to comply with the registration requirements for antenna structure #1041256.

13. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),<sup>16</sup> and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with the prescribed lighting and/or marking for an antenna structure is \$10,000. The base forfeiture amount for failing to file required forms is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>17</sup> which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$13,000 forfeiture is warranted.

#### IV. ORDERING CLAUSE

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, El Dorado 900, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violations of Section 303(q) of the Act, and Sections 17.23, 17.47, 17.48, and 17.57 of the Rules.<sup>18</sup>

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, El Dorado 900, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos,

---

<sup>16</sup>12 FCC Rcd 17087(1997), Recon. Denied 15 FCC Rcd 303 (1999).

<sup>17</sup>47 U.S.C. § 503(b)(2)(D).

<sup>18</sup> 47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.23, 17.47, 17.48 and 17.57.

---

**Federal Communications Commission**

---

California 90703 and must include the NAL/Acct. No. referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>19</sup>

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to El Dorado 900, LLC, 9426 Old Katy Road, Bldg. 10, Houston, Texas 77055.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton  
District Director  
Los Angeles Office  
Western Region  
Enforcement Bureau

---

<sup>19</sup> See 47 C.F.R. § 1.1914.